REMARKS

In response to the final Office Action mailed January 24, 2007, applicants respectfully request reconsideration. In the Office Action, claims 1-21 were rejected. By this amendment, claims 1, 15 and 16 have been amended, claim 14 has been canceled and claims 25 and 26 have been added. Claims 1 – 13, 15-21, 25 and 26 are pending in this application.

Rejection of Claims Under 35 U.S.C. §102

Claims 1-21 were rejected under 35 U.S.C. §102 as being anticipated by Lumelsky et al. (U.S. Patent No. 6,460,082) and separately as being anticipated by Goebel. These rejections are respectfully traversed, as neither reference teaches the invention recited in amended independent claim 1.

Independent claim 1 has been amended to recite a system for delivering content over a data network, comprising:

a data storage device for storing content to be delivered over the data network,

a server process capable of monitoring the data network for responding to a request to serve selected content over the data network, and

a file system capable of communicating with the server process and capable of processing the request to process meta-data that identifies attributes of the request and that is representative of a level of service to be provided to the request; and

a scheduling process for generating a schedule for servicing the request.

The examiner, in the rejection of claim 14, stated that Lumelsky discloses a scheduling process for generating a schedule for servicing the request, and recites Fig. 3b, col. 8, line 59-col. 9, line 16, and col. 16, lines 10-18 for support of this position. However, Fig. 3a is merely a plot of the resource usage versus time for a given service (col. 8, lines 61-62) and Fig. 3b is a table of the time-variant resource envelope (col. 9, lines 7-9). Neither the figures nor the description of the figures teaches or suggests "a scheduling process for generating a schedule for servicing the request." Further, col. 8, lines 10-18 do not teach "a scheduling process for generating a schedule for servicing the request." There is no disclosure in Lumelsky of scheduling request

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services. The mention of the word "scheduling" on line 15 is not enough to support the rejection because it is not specific to what is being scheduled other than CPU or CPU loads. This does not anticipate applicant's recited process for generating a schedule of request services.

With regard to Goebel, there is no teaching whatsoever regarding scheduling services. The examiner points to the term "deadline information" in Section 3.1, but does not provide a recitation of the teaching of the scheduling of request services.

Accordingly, since neither Lumelsky nor Goebel teach the invention recited in amended independent claim 1, claim 1 is allowable and the rejection under 35 U.S.C. §102 should be withdrawn.

Claims 2-13 and 15-21 depend from independent claim 1 and are allowable for at least the same reasons as independent claim 1.

New claim 25 recites a system for delivering content over a data network, comprising:

a data storage device for storing content to be delivered over the data network,

a server process capable of monitoring the data network for responding to a request to serve selected content over the data network,

a file system capable of communicating with the server process and capable of processing the request to process meta-data that identifies attributes of the request and that is representative of a level of service to be provided to the request; and

a control process for managing a system resource for controlling a rate at which services are provided.

New claim 25 is the combination of independent claim 1 and dependent claim 20. The examiner, in the rejection of claim 20, stated that Lumelsky disclosed a control process for managing a system resource for controlling a rate at which services are provided. However, applicant asserts that this is not the case, as there is no disclosure in Lumelsky of controlling the rate at which services are provided. Lumelsky teaches allocating available resources to service requests, but does not disclose controlling the rate at which services are provided.

Likewise, Goebel reserves resources in order to insure that an accepted request can be serviced, however, if the resources are not available, the request is rejected. See the description

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of Step 6a in Section 5. Goebel does not teach or suggest controlling the rate at which services are provided.

Accordingly, since neither Lumelsky nor Goebel teach the invention recited in independent claim 25, claim 25 is allowable and the rejection under 35 U.S.C. §102 should be withdrawn.

Claim 26 depends from independent claim 25 and are allowable for at least the same reasons as independent claim 25.
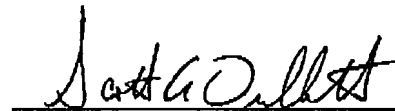
Based on the foregoing, applicants respectfully assert that claims 1-13, 15-21, 25 and 26 are allowable over the art of record and respectfully request that a timely Notice of Allowance be issued in this application.

In the event the Patent Office deems personal contact desirable in disposition of this matter, the Office is invited to contact the undersigned attorney at (508) 293-7835.

Please charge any fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: 8/24/07

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